

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

SHARROD MOTEN,

Plaintiff,

v.

OFFICE OF THE INSPECTOR
GENERAL, *et al.*,

Defendants.

Case No. 1:25-cv-00188-KES-EPG (PC)

FINDINGS AND RECOMMENDATIONS
TO DISMISS THIS ACTION WITHOUT
PREJUDICE FOR FAILURE TO
PROSECUTE AND FAILURE TO
COMPLY WITH COURT'S ORDERS

OBJECTIONS, IF ANY,
DUE WITHIN 30 DAYS

Plaintiff Sharrod Moten is confined at Kern Valley State Prison and is proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. Plaintiff sues “Office of the Inspector General, Ombudsman Tammy Falconer, and Kern Valley State Prison, alleging a deliberate conspiracy amongst Defendants to obstruct justice, shield themselves from liability,” and violate Plaintiff’s constitutional rights. (*See generally* ECF No. 1).

For reasons stated below, the Court recommends that this case be dismissed without prejudice for failure to prosecute and failure to comply with the Court’s orders.

I. BACKGROUND

On February 20, 2025, the Court screened Plaintiff’s Complaint and found that it failed to comply with Rule 8 requirements and was not filed under oath. (ECF No. 19). The Court granted Plaintiff leave to amend his complaint within thirty days of the order. (*Id.* at 4). That

1 deadline has passed, and Plaintiff has not filed an amended complaint or otherwise
2 communicated with the Court.

3 **II. LEGAL STANDARDS**

4 Under Federal Rule of Civil Procedure 41(b), a court may dismiss an action for failure
5 to comply with court orders and to prosecute. In determining whether to dismiss an action
6 under Rule 41(b) for failure to prosecute or failure to comply with a Court order, “the Court
7 must weigh the following factors: (1) the public’s interest in expeditious resolution of
8 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to
9 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy
10 favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th
11 Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992)).

12 **III. ANALYSIS**

13 In applying the *Pagtalunan* factors to this case, the first factor weighs in favor of
14 dismissal, because “[t]he public’s interest in expeditious resolution of litigation always favors
15 dismissal.” *Id.* (quoting *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999)
16 (internal quotation marks omitted).

17 As to the second factor, the Court’s need to manage its docket, “[t]he trial judge is in
18 the best position to determine whether the delay in a particular case interferes with docket
19 management and the public interest.” *Id.* Here, Plaintiff has failed to amend his complaint or
20 otherwise communicate with the Court. Allowing this case to proceed further without any
21 indication that Plaintiff intends to prosecute his case is a waste of judicial resources. *See Hall v.*
22 *San Joaquin County Jail*, No. 2:13-cv-0324 AC P, 2018 WL 4352909, at *2 (E.D. Cal. Sept.
23 12, 2018) (“The court will not continue to drag out these proceedings when it appears that
24 plaintiffs have no intention of diligently pursuing this case.”). Therefore, the second factor
25 weighs in favor of dismissal.

26 Turning to the third *Pagtalunan* factor, risk of prejudice to Defendants, “pendency of a
27 lawsuit is not sufficiently prejudicial in and of itself to warrant dismissal.” *Pagtalunan*, 291
28 F.3d at 642 (citing *Yourish*, 191 F.3d at 991). However, “delay inherently increases the risk that

witnesses' memories will fade and evidence will become stale," *id.* at 643, and it is Plaintiff's failure to comply with a court order that is causing delay and preventing this case from progressing. Therefore, the third factor weighs in favor of dismissal.

As for the availability of lesser sanctions, the fourth *Pagtalunan* factor, at this stage in the proceedings there is little available to the Court which would constitute a satisfactory lesser sanction while protecting the Court from further unnecessary expenditure of its scarce resources. Monetary sanctions are of little use, considering Plaintiff's incarceration and *in forma pauperis* status. And, given the stage of these proceedings, the preclusion of evidence or witnesses is not available. Moreover, dismissal *without prejudice* is the lesser sanction available to the Court. Under Federal Rule of Civil Procedure 41(b), a court may dismiss an action *with* prejudice for failure to comply with court orders and to prosecute. Fed. R. Civ. P. (41)(b); *see also Link v. Wabash R. Co.*, 370 U.S. 626, 630–31 (1962) (holding that Rule 41(b) allows *sua sponte* dismissal by the Court because "[t]he authority of a court to dismiss *sua sponte* for lack of prosecution has generally been considered an 'inherent power,' governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.") Therefore, the fourth factor also weighs in favor of dismissal.

Finally, because public policy favors disposition on the merits, this factor weighs against dismissal. *Pagtalunan*, 291 F.3d at 643.

IV. CONCLUSION AND RECOMMENDATIONS

After weighing the factors, the Court finds that dismissal without prejudice is appropriate.

Accordingly, **IT IS RECOMMENDED** that:

1. This action be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to follow Court's orders; and
2. The Clerk of Court be directed to close this case.

These findings and recommendations will be submitted to the United States district judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within

1 thirty days after being served with these findings and recommendations, Plaintiff may file
2 written objections with the Court. The document should be captioned “Objections to Magistrate
3 Judge’s Findings and Recommendations.” Any objections shall be limited to no more than 15
4 pages including exhibits.

5 Plaintiff is advised that failure to file objections within the specified time may result in
6 the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014)
7 (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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9 IT IS SO ORDERED.

10 Dated: **April 15, 2025**

11 /s/ Eric P. Grogan
12 UNITED STATES MAGISTRATE JUDGE
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